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MILITARY GOVERNORS' CONFERENCE
REPORT OF WORKING PARTY NO. 6

TERMS OF REFERENCE

1. At their meeting on the 19th March the British, U.S. and French Commanders-in-Chief gave instructions for the formation of a Working Party with the following terms of reference:-

"To study the question of safeguarding the rights of foreign owners of the coal and steel industries in the Ruhr and elsewhere in Germany."

The work was to be undertaken in full consultation with a delegation from the BENELUX countries.

CONDITIONS WHICH HAVE AFFECTED THE PREPARATION OF THIS REPORT

2. The British member, in taking part in the discussions on this subject, has regarded himself as bound by the recorded results of the recent London Tripartite Talks. He has considered that it was made clear in these records that the present conversations should be restricted to studying the question of safeguarding foreign interests in the two main industries of coal and steel in the context of the future international control of the Ruhr. As a result, he has not considered this Working Party as justified to deal with this subject as it affects current Military Government policy, the question of ultimate ownership, or current managerial arrangements. Consequently, when issues have been raised which traverse this interpretation, the British member has felt obliged to refrain from comment and to reserve the British position.

3. The U.S. member, without regarding himself as bound in a manner similar to the British member, nevertheless has also regarded issues which encroach upon the current managerial arrangements as outside the competence of the Working Party, and as more properly coming within the competence of Working Parties 2 and 4.

4. The French and BENELUX delegations consider that the London Conference took no decisions restricting the study of the safeguarding of Allied interests. Therefore the French and BENELUX delegations have pointed out that the terms of reference as given to the Working Party by the Military Governors' Conference are the only limitations to the scope of the Working Party's task. The French and BENELUX representatives have regarded the task of the Working Party as entitled to be conducted with the broadest terms of reference and with no restrictions as regards current Military Government policy or questions of ultimate ownership or present managerial rights.

5. The Working Party has been compelled to carry out its task within the limitations implied by these differences of approach. Discussions have taken place under seven headings proposed jointly by the French and BENELUX delegations. The results are set out in the succeeding paragraphs. Proposals which have been agreed by all delegations have been sidelined.

OSD review(s) completed.

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ITEM I.

6. Joint French/RFFIJX proposal is as follows:-

Protection of ownership rights

- A. Allied property shall not be the subject of any measures affecting the ownership rights, such as deconcentration, expropriation, decartelization, nationalization and land reform.
- B. However, the enterprises comprising less than 50% Allied interests may be subjected to the measures mentioned in the preceding paragraph, with the reservation that in this event the question of the treatment of these holdings shall be studied beforehand with the interested parties, in the spirit of such principles as are enumerated below:-
- (i) The money value of minority foreign investments in German enterprises should be evaluated according to their pre-war value on a gold basis.
- (ii) A solution for the protection of minority interests might be found in pooling minority participations into a lesser number of majority interests. Such interests should then be treated in every respect as other Allied property.
- (iii) If re-grouping, as proposed in sub-para. (ii) could not take effect, other methods of safeguarding should be reached. They should include:-

 - (a) influence in the management of the enterprises in proportion to the size of the foreign interests;
 - (b) transfer of dividends and interests.
 - (c) the prevention of discrimination against the interests of the foreign owners concerned. These owners should be in a position to exercise their rights to the full extent within the limits of the legislation in force in Germany;

- (iv) In the absence of a solution as mentioned above, no measures affecting the interests of enterprises containing Allied minority interests should be taken without an amicable arrangement with the Allied interested parties concerned, or, failing agreement, without establishing previously a full and transferable indemnification in kind or otherwise, in agreement with the Allied owners.
- C. A factual elaboration of the RFFIJX position in regard to minority interests is attached at Appendix "A"

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7. The U.S. delegation wishes to record the U.S. position as follows:-

The U.S. delegation has already given its assurance to the general principle that foreign interests will be safeguarded. It has also indicated its complete agreement that such interests should be guaranteed freedom from any discriminatory action which might be taken against them by German administrations both in the future and during the present period of military occupation. The U.S. delegation is not prepared to give the French and BENELUX delegations the categorical commitment which they request under Item 1. The U.S. delegation considers that a course of action as proposed would have the effect of setting up undesirable discrimination.

The U.S. delegation is in a position to give certain assurances as concern measures which have been or are being imposed upon the German people in order partially to compensate Allied nations for losses incurred as a result of German aggression. For example, the U.S. delegation can assure the French and BENELUX delegations that the policy which resulted in the selection of the final list of plants to be taken as reparations from the U.S. Zone, required that reparations should be taken in the first place from German owners, and that only after wholly-German owned facilities had been exhausted were facilities having foreign interests designated. In the latter event enterprises with a minority of foreign interests were taken first.

The U.S. delegation takes the position that the measures of decentralization, decartelization, nationalization and land reform which are specifically mentioned in the French/BENELUX proposals under Item I are not measures which are being imposed on the Germans as a punishment for war guilt, but are imposed upon the German people, or will be adopted as a result of the expressed opinion of the German people, as the case may be, as being a sound and healthy basis for the future German peacetime economy. Consequently, the U.S. delegation takes the position that any person who wishes to be part of the future German economy, and to operate commercially within that economy, must conform to the general pattern and that it would be impracticable to attempt to establish special economic conditions for limited and specified interests.

The U.S. delegation recognises that losses incurred by Allied interests as a result of these measures should be compensated, and conveys the U.S. conviction that provision should be made in the peacetreaty for just compensation to Allies suffering losses incident thereto by establishing a claim against the future German government.

The U.S. delegation would like to point out that Allied owners are not involved in measures of expropriation. Expropriation implies confiscation without compensation. In the U.S. Zone such actions have been taken only against those who have been found guilty of war crimes or of furthering the aims of the Nazi regime.

In regard to the French/BENELUX recommendations for treatment of minority interests the U.S. delegation takes the following position:-

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The U.S. delegation cannot agree to the proposal that minority interests be exchanged in such a way as to accord the owners a smaller number of majority interests. Such a procedure would not be possible under the present rules laid down by U.S. Military Government against barter transactions, and the overall policy which provides a moratorium against foreign investments, unless such investments fulfil certain clearly specified conditions, including the condition that the proposed acquisition shall not result in the foreign purchaser acquiring a greater percentage of interest in the given field than he enjoyed before the war.

It is doubted that there will be any change in this policy in regard to the moratorium on foreign investments until after currency reform. The U.S. delegation is quite willing to recommend that, within the framework of a possible tri-zonal fusion, a BENELUX delegation should be invited to participate in discussion of a revision of the moratorium policy when the issue is again raised by the occupying power or powers involved.

In regard to the French/BENELUX proposal that minority interests should have an influence in the management of enterprises in proportion to the size of the foreign interests, the U.S. delegation takes the position that such a suggestion is perfectly acceptable if the foreign interests are sufficiently large to entitle them to elect one or more directors under existing German law, with the understanding that such directors for the time being would have to be limited to German personnel and be appointed and governed in conformity with existing Military Government regulations.

In regard to the French/BENELUX proposal that they should be allowed to transfer dividends and interest, the U.S. delegation points out that such measures would have to await a change in the German internal economy and monetary situation which would allow removal of profits in the form of foreign currency which, under present circumstances, cannot be permitted.

In regard to the French/BENELUX proposal that Allied owners should be in a position to exercise their right to the full extent within the limits of the legislation in force in Germany, the U.S. delegation expresses agreement in principle with the reservation that such exercise of rights must also conform with existing Military Government regulations.

8. The French and BENELUX delegations take note of the statement of principle made by the American delegation to the effect that Allied interests will be safeguarded, and that it is in agreement to guarantee their interests against any discriminatory measures. They regret to find themselves in disagreement with the views expressed by the American delegation according to which the Allied owners should conform to the measures taken with regard to German owners such as deconcentration, decartelization and agrarian reform. These measures were taken by the Allies in Germany to prevent groups of interests or a class of individuals from orienting Germany, in the future as they have done in the past, towards a policy of aggression. The same reasons can be put forward, in the future, in favour of eventual measures of nationalization. Such considerations should not apply to Allied interests in Germany.

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We decisions taken in the French Zone of occupation concerning deconcentration, decartelization and agrarian reform, make exceptions in favour of Allied interests.

The French and BENELUX delegations recall that the Nazi Government has always endeavoured to eliminate the influence of Allied interests in Germany. The Allies should not remain indifferent to the fact that the Germans might make a pretext of a policy of nationalization to revive the tendencies shown in the past towards foreign interests.

Moreover, the French and BENELUX delegations cannot accept the allegation made by the American delegation according to which the demands of France and of BENELUX relative to the protection of Allied interests tend to establish special economic conditions in their favour. The only aim of the demands of France and BENELUX is the respect of the contracts established at international level during the previous regime of free development for the enterprises.

The delegations of France and BENELUX are convinced that an agreement must be reached between the Western Powers interested in the German settlement to guarantee the respect of their legitimate rights in Germany.

9. In accordance with the British interpretation of the terms of reference of this Working Party as expressed in paragraph 2 the British delegation wishes to reserve its position without comment.

ITEM II

10. Joint French/BENELUX proposal is as follows:-

Protection of the effective exercise of Ownership Rights

The limitation at present imposed on the powers of owners, by virtue partly of the appointment of custodians, and partly by the control exercised by the UK/US Coal Control Group and the D.K.B.I., deprives the Allied owners of the exercise of most of those rights which are the normal attribute of ownership.

While admitting that this situation may be justified up to a point, and on an entirely provisional basis in the present circumstances, it is asked that Allied owners may be able to recover the full enjoyment of their rights as soon as possible.

In particular the measures of sequestration at present imposed on Allied owners under Law 52 and particularly under General Order No.5 should be removed immediately.

Owing to the present situation in the mining industry, the Allied mines have to remain under general supervision, and must observe certain general rules as regards the distribution of coal, the granting of subsidies to the mines, the distribution of labour, mining equipment and various supplies. Notwithstanding this, the Allied mines should immediately be

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placed in a position to resume the normal exercise of the management of their undertakings and in particular to call general meetings and meetings of boards of directors, supervisory councils, management committees, etc.

Appointment of personnel made by the Allied mines should not have to be submitted to the D.K.R.I. for approval.

The appointment of management staffs of German nationality only should be submitted for approval to the appropriate Military Government.

11. The U.S. position is as follows:-

The U.S. delegation considers this a question within the terms of reference of the Working Party. It points out, however, that foreign managers could not at this time be appointed because of lack of supplies and accommodations. It further points out that if Allied owners were allowed to appoint their own Vorstand and Aufsichtsrat grave practical difficulties would be encountered in that the scope of authority of these bodies would run into the scope of authority of the functions presently performed by the D.K.R.I. and the UK/US Coal Control Group. It is not seen that in the face of the governmental controls which must presently be continued and the overriding authority of the D.K.R.I. and the UK/US Coal Control Group that there would be any scope for independent decisions by private managements. The U.S. delegation therefore recommends that this matter be referred to the UK/US Coal Control Group for a study and report as to the extent that present functions of the D.K.R.I. and the UK/US Coal Control Group could be relaxed in order to allow an exercise of a degree of authority by a Vorstand and Aufsichtsrat chosen by the stockholders.

12. The French and BENELUX delegations are not impressed by the statement according to which it would be impossible to admit Allied management personnel in the Allied enterprises of the coal and steel industries because of the shortage of supplies and accommodations. The personnel introduced by such a measure would only amount to a few dozen people.

On the other hand, the delegations of France and BENELUX recall that the Governments of London and Washington have agreed that the Allied owners could nominate managers of their choice to take charge of their enterprises.

Moreover, they consider that the lifting of sequestrations and the resuming of company activity of the enterprises, and particularly the meeting of the Vorstand and Aufsichtsrat are the necessary conditions of the management for the enterprises. If these activities, as stated by the American delegation were not compatible with the functions of the D.K.R.I., the French and BENELUX delegations could come to the conclusion that the institution of the D.K.R.I. is in fact a nationalization.

The French and BENELUX delegations accept that this question should be referred to the UK/US Coal Control Group at Essen for study and report. They ask, furthermore, that representatives of France and BENELUX be associated with the preparation of this report jointly with the American and British representatives. The conclusions should be communicated to the three Commanders-in-Chief, as well as to the Chiefs of the Military Missions of the BENELUX nations.

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13. In accordance with the British interpretation of the terms of reference of this Working Party as expressed in paragraph 2 the British delegation wishes to reserve its position without comment.

ITEM III

14. Joint French/BENELUX proposal is as follows:-

Allocation of coal

In the exports of coal from Germany to the Allied countries concerned, priority should be given to the collieries belonging to nationals of those countries wherever this is technically possible.

As soon as economic and financial conditions permit, Allied owners should have the disposal of the fuel produced by their mines, or at least that part of it of which they disposed under conventions existing before the Nazi regime, within the framework of the allocations of coal exported from Germany which were fixed by international agreements.

As soon as normal machinery for export prices is re-established, the conditions of settlement laid down in the above-mentioned conventions should come back into force.

15. The U.S. position is as follows:-

The U.S. delegation feels that while all coal produced is still subject to government allocation, and while the D.K.B.I. retains the responsibility for seeing that the correct type of coal gets to the proper user from the nearest source, it would be impracticable and would merely lead to confusion to inject the additional consideration of ownership of the delivering mine into the already complicated allocation process.

16. The French and BENELUX delegations insist upon the fact that the demand aimed at placing the coal extracted from the Allied mines at the disposal of the owners of the mines has it in mind to respect contracts freely established in the past, taking into account all the economical and technical elements pointed out by the American delegation. Furthermore, part of the Allied mines production is at present already sent to the plants owning the mines.

17. In accordance with the British interpretation of the terms of reference of this Working Party as expressed in paragraph 2 the British delegation wishes to reserve its position without comment.

ITEM IV

18. Guarantees against discriminatory measures
inequitable to Allied Coal and Steel interests

It was agreed that:-

Allied enterprises should be in a position to operate with facilities at least equal to those of the German enterprises, both from the production and from the marketing aspects, and in a general way

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should not be the object of any inequitable discriminatory measure by the responsible administrations, particularly in regard to:-

- (a) the financial structure, subsidies, taxation and prices and the approval of credits;
- (b) the programmes of new works and of reconstruction;
- (c) the supply of pit equipment and of necessary materials and provisions;
- (d) the allocation of manpower;
- (e) transport tariffs;
- (f) the investigations to which they may be subject

ITEM V

19. Joint French/PENELUX proposal is as follows:-

Financial structure

As long as the economic conditions under which the mines are exploited and, more particularly, the sales prices are fixed by higher authority, the Allied mines should be put in a position to ensure their financial equilibrium, taking into account the normal depreciation and allowing for as much as possible, a normal profit. Moreover, as long as this financial equilibrium cannot be achieved by the fixing of adequate sales prices, supplementary financing in the form of subsidies is necessary and the Allied mines should have the assurance that the money thus acquired, except that employed against capital expenditure, will not be subject to repayment, so that the possibility of their losing their property as a result of debts may be avoided.

Retrospectively, as from the beginning of the Allied occupation to the setting up of a new system of financing to meet the conditions indicated above, accounting deficits, as they appear on the balance sheet, should be compensated in their entirety by subsidies permanently granted to the mines. It should be noted that accounting deficits do not include capital expenditure or outlay on reconstruction.

The financing of capital expenditure, and, until permanent legislation is established, that of reconstruction should be provided by long term loans granted to the mines.

20. The U.S. delegation considers this matter within the scope of the Working Party. The U.S. delegation points out that the U.S. and U.K. Military Governors have recently instructed the Bizonal Economic Council to take under consideration the question of providing adequate compensation to coalmines to cover their day to day operating expenses.

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Pursuant to those instructions the Bi-Zonal Economic Council has enacted legislation which will provide a rise in prices and a subsidy to the coalmines of an amount considered adequate to cover their charges, except those of capital account. It is contemplated that funds necessary for capital expenditure will be sought from the private capital market. In view of this action it is believed by the U.S delegation that no further steps are necessary at this time.

21. The French and BENELUX delegations consider that the recent decisions regarding the price of coal constitute an important step forward in the reorganization of the financial situation of the mines.

However, the U.S delegation's reply leaves on one side the question of the settlement of debts accumulated by the Allied mines as a result of the inadequacy of the price of coal.

The French and BENELUX delegations draw attention to the need for a speedy decision on this question as the continued existence of such heavy debts leaves the Allied mines in doubt as to their future.

The French and BENELUX delegations fear that the absence of a definite decision on the point mentioned above, as well as the threat of nationalization which still exists would make it impossible for the Allied mines to seek private capital for the financing of reconstruction as envisaged by the U.S delegation.

22. In accordance with the British interpretation of the terms of reference of this Working Party as expressed in paragraph 2, the British delegation wishes to reserve its position without comment.

ITEM VI

23. Joint French/BENELUX proposal is as follows:-

Regime for the Aix-la-Chapelle mines

- (i) Up to April 1934, the Aix-la-Chapelle coalfield, in common with other German coalfields, was completely independent of the Ruhr concerns

In 1934, by order of the Nazi authorities, the Aix coalfield lost its freedom, whilst all other German coalfields retained their independence.

While admitting that the control now exercised by the Allied authorities may be justified up to a point and on an entirely provisional basis, in present circumstances, it is considered that the independence of the Aix-la-Chapelle coalfields from all German organizations should be re-established under the conditions existing before this coalfield lost its independence on the 1st April, 1934, as circumstances permit.

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- (ii) It is asked in particular that the discriminatory measures, of which the Aix mines became the victims in 1934, when they lost their independence, should be dropped now and in any future scheme which may be set up.

These mines, alone among all German mines, were obliged, on the 1st April 1934, to reduce their internal sales prices considerably and to bring them arbitrarily into line with those of the Ruhr, whereas the normal workings of the law of economy would have assured them internal sales prices about 20% higher than those of the Ruhr. (This on account of their geographical situation and their more difficult mining conditions which, given the same technical facilities, would normally result in an output in the Ruhr more than 40% higher than that of Aix-la-Chapelle).

As long as the Aix-la-Chapelle mines cannot be assured of adequate internal sales prices through the normal workings of the law of economy, measures should be taken to bring the receipts of their coal up to about 20% higher per ton than that of the Ruhr).

24. It was agreed that the French and BENELUX nations should take part in the investigation which is being conducted by the UK/US Control Group as a result of the requests presented in order to obtain receipts per ton sold by the Aix mines different from those of the Ruhr.

25. As regards the remainder of the French/BENELUX proposal, the U.S. position is as follows:-

The U.S. delegation considers this subject one which should be discussed more properly under the terms of reference of Working Party No.2. In accordance with the British interpretation of the terms of reference of this Working Party as expressed in paragraph 2 the British delegation wishes to reserve its position without comment.

26. The French delegation, having noted the position of the U.S. delegation, wishes to reserve the option to raise the question of the receipts of Aachen mines in Working Party No.2.

ITEM VII

27. Joint French/BENELUX proposal is as follows:-

Control of the implementation of the measures to be taken to ensure the protection of Allied enterprises

- (1) Within the framework of the present organization

The Allied enterprises concerned should be in a position to know if discriminatory measures have been taken against them. To make this

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possible it would be necessary to supply them with all necessary information and to permit them to form groups in order to appoint representatives in all trade and professional organizations. Insofar as the mining industry is concerned, they should be represented in the advisory committee working with Dr Gal of the D.K.B.L. The UK/US Coal Control Group, or possibly the Military Governments concerned, should continue to examine, in conjunction with the Allies concerned, the points which they might bring up in regard to the Allied mines in accordance with Item 4 of the Anglo-U.S. Memorandum of 12.11.47.

(ii) In the framework of the future organization

- (a) Whatever may be the organization for the administration of the mines and metallurgy of the Ruhr, the Allied enterprises should be in a position to know of any discriminatory measures taken against them, and in order to ensure the receipt of such information, should be permitted to establish the necessary machinery, including full representation in all trade and professional organizations.
- (b) An inter-Allied organization should be entrusted with the care of seeing that no discriminatory measures are taken against Allied enterprises. It must ensure that the enterprises shall receive exact information according to para. (a) above. It must be competent to judge difficulties or conflicts which may arise.
- (c) This organization should be provided for this purpose with the necessary means of information or investigation such as those mentioned in the provisional agreement reached in London regarding the International Control of the Ruhr. Its decisions would be transmitted to the competent authorities for implementation.
- (d) It is considered that the Inter-Allied organization referred to above should form part of any future international regime which may be set up to exercise control functions in the Ruhr coal mining and steel industries.

28. As regards para. (i) above the U.S. position is as follows:-

The U.S. delegation considers this subject one which should be discussed more properly under the terms of reference of Working Parties 2 and 4.

29. As regards para. (i) above the British delegation in accordance with the British interpretation of the terms of reference of this Working Party as expressed in para. 2 wishes to reserve its position without comment.

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30. As regards para. (ii) above, the British and U.S. delegations agree to the proposals which have been put forward in the framework of the future organizations and wish to associate themselves with the French/BENELUX position

For the French Delegation (Signed) R. HUMBERT

For the U.S. Delegation (Signed) PHILLIPS HAWKINS

For the BENELUX Delegation

For Belgium (Signed) G. GOETHALS, LT. GEN.

For the Netherlands (Signed) W. HUENDER, MAJ. GEN. DR.

For Luxembourg (Signed) H. WEHRER, CCI.

For the U.K. Delegation (Signed) C.C. OXBORROW, BRIGADIER

LANCASTER HOUSE,
BERLIN.

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MEMORANDUM ON FOREIGN MINORITY INTERESTS IN
THE GERMAN COAL, IRON AND STEEL INDUSTRIES

Besides important majority interests, the Netherlands have considerable minority participations in various mining, iron and steel concerns in Germany, mostly already since pre-Hitler days. The importance of these interests far exceeds their money value. It should be remembered that economically the Netherlands and Western Germany, particularly the Ruhr area, have always been very closely interrelated, thus the Netherlands investments were directed towards the stabilization and the development of the existing commercial interests between the two countries, especially with a view to the transit trade via the Netherlands, and shipping via the Netherlands ports. Therefore those minority interests cannot be abandoned without considerable harm to the Netherlands.

As far as the money value of these investments is concerned it must be pointed out that since the capitulation of Germany the balance sheets of most of the enterprises concerned show abnormal losses, the selling prices not being based on the normal laws of supply and demand.

The money value of foreign investments in German enterprises should therefore be evaluated according to their pre-war value. Many difficulties will no doubt be encountered in applying general measures to protect minority interests to this extent. A solution might be found in pooling minority participations into a lesser number of majority interests. The Netherlands fully realise that in doing so part of their influence they had through their minority participations in a number of German enterprises will have to be sacrificed. Nevertheless, as a means of reaching a practical solution, this proposal seems to deserve due consideration.

It will be understood that if majority interests would be created by this procedure, they should be treated in every respect as other Allied property.

If and insofar as pooling of minority interests would not take effect, safeguarding of the rights of foreign owners ought to be reached by other methods. These methods should then cover e.g:-

- (a) influence in the management of the enterprises in proportion to the size of the foreign interests;
- (b) transfer of dividends and interests;
- (c) the prevention of discrimination against the interests of the foreign owners concerned. These owners should be in a position to exercise their rights to the full extent within the limits of the legislation in force in Germany.

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- (d) No measures of deconcentration, decartelization or agrarian reform, affecting properties with minority foreign interests should be put into effect, unless after full consultation of the foreign owners concerned, also with a view to the arrangement of their say in the management of such properties.

As far as their minority interests in the German industry are concerned, the preceding considerations and conclusions equally apply to the two other BENELUX countries. In any case the BENELUX countries are of the opinion that no measure which might affect the interests of enterprises, containing Allied minority participations, should be taken without fixing previously a full and transferable indemnification in kind or otherwise, in agreement with the Allied owners.

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